

§ 201.21 [Reserved]

§ 201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.

(a) *Definitions.* (1) An *Advance Notice of Potential Infringement* is a notice which, if served in accordance with section 411(b) of title 17 of the United States Code, and in accordance with the provisions of this section, enables a copyright owner to institute an action for copyright infringement either before or after the first fixation of a work consisting of sounds, images, or both that is first fixed simultaneously with its transmission, and to enjoy the full remedies of said title 17 for copyright infringement, provided registration for the work is made within three months after its first transmission.

(2) For purposes of this section, the *copyright owner* of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, is the person or entity that will be considered the author of the work upon its fixation (including, in the case of a work made for hire, the employer or other person or entity for whom the work was prepared), or a person or organization that has obtained ownership of an exclusive right, initially owned by the person or entity that will be considered the author of the work upon its fixation.

(3) A *transmission program* is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

(b) *Form.* The Copyright Office does not provide printed forms for the use of persons serving Advance Notices of Potential Infringement.

(c) *Contents.* (1) An Advance Notice of Potential Infringement shall be clearly and prominently captioned “ADVANCE NOTICE OF POTENTIAL INFRINGEMENT” and must clearly state that the copyright owner objects to the relevant activities of the person responsible for the potential infringement, and must include all of the following:

(i) Reference to title 17 U.S.C. section 411(b) as the statutory authority on which the Advance Notice of Potential Infringement is based;

(ii) The date, specific time, and expected duration of the intended first transmission of the work or works contained in the specific transmission program;

(iii) The source of the intended first transmission of the work or works;

(iv) Clear identification, by title, of the work or works. A single Advance Notice of Potential Infringement may cover all of the works of the copyright owner embodied in a specific transmission program. If any work is untitled, the Advance Notice of Potential Infringement shall include a detailed description of that work;

(v) The name of at least one person or entity that will be considered the author of the work upon its fixation;

(vi) The identity of the copyright owner, as defined in paragraph (a)(2) of this section. If the copyright owner is not the person or entity that will be considered the author of the work upon its fixation, the Advance Notice of Potential Infringement also shall include a brief, general statement summarizing the means by which the copyright owner obtained ownership of the copyright and the particular rights that are owned; and

(vii) A description of the relevant activities of the person responsible for the potential infringement which would, if carried out, result in an infringement of the copyright.

(2) An Advance Notice of Potential Infringement must also include clear and prominent statements:

(i) Explaining that the relevant activities may, if carried out, subject the person responsible to liability for copyright infringement; and

(ii) Declaring that the copyright owner intends to secure copyright in the work upon its fixation.

(d) *Signature and identification.* (1) An Advance Notice of Potential Infringement shall be in writing and signed by the copyright owner, or such owner's duly authorized agent.

(2) The signature of the owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(3) If an Advance Notice of Potential Infringement is initially served in the form of a telegram or similar communication, as provided by paragraph (e)(2)(iii) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) *Service.* (1) An Advance Notice of Potential Infringement shall be served on the person responsible for the potential infringement not less than 48 hours before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).

(2) Service of the Advance Notice may be effected by any of the following methods:

- (i) Personal service;
- (ii) First-class mail; or
- (iii) Telegram, cablegram, or similar form of communication, if:

(A) The Advance Notice meets all of the other conditions provided by this section; and

(B) Before the first fixation and simultaneous transmission take place, the person responsible for the potential infringement receives written confirmation of the Advance Notice, bearing the actual handwritten signature of the copyright owner or duly authorized agent.

(3) The date of service is the date the Advance Notice of Potential Infringement is received by the person responsible for the potential infringement or by any agent or employee of that person.

(17 U.S.C. 411, 702)

[46 FR 28849, May 29, 1981, as amended at 63 FR 66042, Dec. 1, 1998; 66 FR 34373, June 28, 2001]

§ 201.23 Transfer of unpublished copyright deposits to the Library of Congress.

(a) *General.* This section prescribes rules governing the transfer of unpublished copyright deposits in the custody of the Copyright Office to the Library of Congress. The copyright deposits may consist of copies, phonorecords, or identifying material deposited in connection with registration of claims to copyright under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553, 90

Stat. 2541, effective January 1, 1978. These rules establish the conditions under which the Library of Congress is entitled to select deposits of unpublished works for its collections or for permanent transfer to the National Archives of the United States or to a Federal records center in accordance with section 704(b) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(b) *Selection by the Library of Congress.* The Library of Congress may select any deposits of unpublished works for the purposes stated in paragraph (a) of this section at the time of registration or at any time thereafter; *Provided, That:*

(1) A facsimile reproduction of the entire copyrightable content of the deposit shall be made a part of the Copyright Office records before transfer to the Library of Congress as provided by section 704(c) of title 17 of the United States Code, as amended by Pub. L. 94-553, unless, within the discretion of the Register of Copyrights, it is considered impractical or too expensive to make the reproduction;

(2) All unpublished copyright deposits retained by the Library of Congress in its collections shall be maintained under the control of the Library of Congress with appropriate safeguards against unauthorized copying or other unauthorized use of the deposits which would be contrary to the rights of the copyright owner in the work under title 17 of the United States Code, as amended by Pub. L. 94-553; and

(3) At the time selection is made a request for full term retention of the deposit under the control of the Copyright Office has not been granted by the Register of Copyrights, in accordance with section 704(e) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(17 U.S.C. 702, 704)

[45 FR 41414, June 19, 1980]

§ 201.24 Warning of copyright for software lending by nonprofit libraries.

(a) *Definition.* A Warning of Copyright for Software Rental is a notice under paragraph (b)(2)(A) of section 109 of the Copyright Act, title 17 of the United States Code, as amended by the